

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MONTANA**

In re

**DAVID HAMILTON, and
ELIZABETH HAMILTON,**

Debtors.

Case No. **06-60161-7**

O R D E R

At Butte in said District this 29th day of March, 2006.

On March 28, 2006, Debtors filed a chapter 7 case, without paying the filing fee. On March 28, 2006, Debtors filed an application for waiver of the chapter 7 filing fee for individuals who cannot pay the filing fee in full or in installments. Debtors disclosed on the application a family size of two. They state that their combined monthly income from line 16 of Schedule I is \$1,306, derived from Social Security. Debtors state that their monthly expenses from line 18 of Schedule J is \$1,634. Debtors state in the Statement of Monthly Net Income on Schedule J that their monthly net income is \$-328. Debtors in question 18 of the application for waiver makes no additional statement as to why they are unable to pay the filing fee in installments.

On October 17, 2005, numerous amendments to the bankruptcy code became effective through the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 ("BAPCPA").

One of the amendments, 28 U.S.C. § 1930(f) (1), provides:

Under the procedures prescribed by the Judicial Conference of the United States, the district court or the bankruptcy court may waive the filing fee in a case under chapter 7 of title 11 for an individual if the court determines that such individual has income less than 150 percent of the income official poverty line (as defined by

the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981 [42 U.S.C. § 9902(2)]) applicable to a family of the size involved and is unable to pay that fee in installments. For purposes of this paragraph, the “filing fee” means the filing fee required by subsection (a), or any other fee prescribed by the Judicial Conference under subsection (b) and (c) that is payable to the clerk upon the commencement of a case under chapter 7.

For a more detailed analysis of the poverty guideline, the Court directs the reader to *In re Nelson*, Case 06-60001 (Bankr. D. Mont. Jan. 5, 2006) (For copy of decision *see* Montana Bankruptcy Reports or Court’s website). The Court calculates the poverty guideline and the 150% of the poverty guideline as follows:

POVERTY GUIDELINES AND CALCULATION OF 150% OF POVERTY GUIDELINE
48 Contiguous States

Persons in Family Unit	Poverty Guideline*	150% of Poverty Guideline**
1	\$9,800	\$14,700
2	13,200	19,800
3	16,600	24,900
4	20,000	30,000
5	23,400	33,915
6	26,800	35,100
7	30,200	45,300
8	33,600	50,400

* Source: <http://aspe.hhs.gov/poverty> . Federal Register, Vol. 71, No. 15, January 24, 2006 pp.3848-3849. These values will change annually hereafter in January or February.

** These values will change in January/February 2007 and annually thereafter.

In applying the above analysis to Debtors’ application for waiver, the Court concludes that Debtors do qualify for a fee waiver for the following reasons. The first factor of 28 U.S.C. § 1930(f) requires the Court to determine if the family combined income is less than 150 percent of

the official poverty line for Debtors' family size. Debtors comprise a 2-member family. The poverty line for a family of 2 under the poverty guidelines is \$13,200. The total combined monthly income for Debtor is \$1,306. This amount times 12 months to establish annual income equals \$15,672. This amount is less than the 150 percent cap of the poverty guideline set at \$19,800. They satisfy the first factor.

The second factor of 28 U.S.C. § 1930(f) requires the Court to determine if Debtors are unable to pay the fee in installments. Debtors' monthly net income is \$-328. The Court concludes, after reviewing the Debtors' schedules and based on Debtors' application that Debtors are unable to pay the chapter 7 filing fee in installments. For cause,

IT IS ORDERED that Debtors' application for waiver of the chapter 7 filing fee for individuals who cannot pay the filing fee in full or in installments is granted; and that the Debtors' filing fee is waived.

BY THE COURT

A handwritten signature in cursive script, reading "Ralph B. Kirscher", is written over a horizontal line.

HON. RALPH B. KIRSCHER
U.S. Bankruptcy Judge
United States Bankruptcy Court
District of Montana